The Court's inherent supervisory jurisdiction over legal practitioners including costs

Hon Justice E M Peden*[1]

Defining the inherent jurisdiction

The inherent jurisdiction of superior Courts has been described as the 'very life-blood' of superior Courts,[2] however, it is only exercised by Courts where there is a clear need to do so. This paper is designed to provide an understanding of the operation of the inherent jurisdiction by reference to some recent examples.

Menzies J explained the inherent jurisdiction as follows:[3]

'"Inherent jurisdiction" is the power which a Court has simply because it is a Court of a particular description. Thus the Courts of Common Law without the aid of any authorising provision had inherent jurisdiction to prevent abuse of their process and to punish for contempt. Inherent jurisdiction is not something derived by implication from statutory provisions conferring particular jurisdiction ... Courts of unlimited jurisdiction have "inherent jurisdiction".'

From a historical perspective, the jurisdiction is generally said to have its roots in English Courts created out of the royal prerogative. Thus, Dawson J observed that although there is now various legislation relating to Courts' jurisdiction, the powers of the Supreme Court of New South Wales continue to be 'identified by reference to the unlimited powers of the Courts at Westminster'.[4]

The actual parameters of the inherent jurisdiction are not clearly defined. Bell CJ recently explained that it can be exercised 'in any circumstances where the requirements of justice demand it and thus cannot be restricted to closed and defined categories of cases',[5] and the Court can make any order 'necessary to prevent any injustice occurring with respect to matters which come within its cognisance'.[6] As McClelland J said in *Dwyer v National Companies & Securities Commission*, 'the extent of the power is commensurate with the requirements of the necessity which calls it into existence'.[7]

In the estimation of Mr Keith Mason, as the subsequent President of the Court of Appeal then was, the inherent jurisdiction has at least four broad objectives:[8]

(1) ensuring convenience and fairness in legal proceeding;

(2) preventing steps from being taken that would render judicial proceedings inefficacious;

(3) preventing abuse of process; and

(4) acting in aid of superior Courts and in aid or control of inferior Courts and tribunals.

Many uses of the inherent jurisdiction are uncontroversial and essential to effectively fulfilling the judicial function of administering justice according to law.

Professor Wendy Lacey has compiled a helpful list of some these uses, which include the following:[9]

(1) Punishing contempt of Court, including any conduct calculated to interfere with the due administration of justice.[10] This has been described as 'the paradigm of the inherent powers';[11]

(2) Remedying breaches of the rules of natural justice and setting aside default orders;

(3) Correcting, varying or extending orders to prevent injustice;

(4) Ordering security for costs in civil actions;

(5) Staying or dismissing proceedings where an action is frivolous, vexatious, oppressive, or groundless; and

(6) Staying of proceedings pending an appeal to a superior Court.

The Court also has statutory authority to make many of the orders referenced above. Rule 13.4 of the Uniform Civil Procedure Rules 2005 (NSW), for example, empowers the Court to stay frivolous or vexatious proceedings in certain circumstances. Similarly, r42.21 allows the Court to order security for costs. As I consider further below, however, the Court may still exercise its inherent jurisdiction in respect of matters regulated by statute, so long as it can do so without contravening a co-extensive statute.[12] Consequently, the inherent jurisdiction may still be available in cases where the conditions necessary to enliven a co-extensive statutory power are not satisfied.

However, it has been said that the inherent jurisdiction remains 'amorphous', so as to 'defy the challenge to determine its quality and to establish its limits'.[13] It has also been described as 'elusive',[14] 'slippery',[15] and 'under-theorised'.[16]

A party can seek to invoke the Court's inherent jurisdiction, but may not always be successful. There are some perhaps surprising examples of applications that have been unsuccessfully

made to common law Courts to consider exercising the inherent jurisdiction:[17]

(1) In *Re B*,[18] the England and Wales Court of Appeal allowed an appeal against a 'seek and find' order made in exercise of the inherent jurisdiction. The order discharged on appeal required, *inter alia*, a tipstaff to seek and receive into custody children who had been abducted by their father and taken to Algeria. It also required the tipstaff to detain the father until his children were in the custody of the British Embassy.

(2) In *UMCI Ltd v Tokio Marine & Fire Insurance*,[19] the High Court of Singapore was asked to exercise its inherent jurisdiction to order a non-party to provide various handwriting samples, prepared under various conditions, for inspection prior to trial. The samples were said to be relevant to the defendants' allegation that the plaintiff fraudulently tampered with certain documents to improve its prospects. The Court refused the order based on prospective intrusiveness to the non-party.

(3) In *Covell Matthews & Partners v French Wools Ltd*,[20] the England and Wales Court of Appeal rejected counsel's submission that the High Court had an inherent jurisdiction to backdate its own orders for the discontinuance of proceedings. Sir David Cairns referred to what would have been the absurd result of saying that an action which had in fact been in existence up to the date of the order had ceased to be in existence at some earlier date.

(4) In *Furesh v Schor*,[21] the Western Australian Court of Appeal rejected an argument that the Supreme Court had power in its inherent jurisdiction to compel a person to undergo DNA testing to determine a paternity issue. In reaching this conclusion, the Court emphasised that, in the absence of an express statutory power entitling it to compel DNA testing, the common law right of control and self-determination in respect of a person's body should be respected.

Supervision of legal practitioners

However, the purpose of this paper is not to summarise all the various applications of the inherent jurisdictions, nor to analyse its outer theoretical limits. The aim is much more modest; to consider one important aspect of the inherent jurisdiction, namely, the inherent supervisory jurisdiction of Courts with respect to legal practitioners.

The essential features of this aspect of the inherent supervisory jurisdiction were recently described by Hammerschlag J in *Ljubomir Atanaskovic and the persons named in Schedule A trading as Atanaskovic Hartnell v Birketu Pty Ltd — Supervisory Jurisdiction*[22] at [29] – [30], and not objected to on appeal. His Honour noted:

'The Court has a well-established inherent supervisory jurisdiction, to which solicitors are amenable, which is designed to impose on them higher standards than the law applies generally. A solicitor is expected to act honourably and ethically. A solicitor is expected to keep her or his word.

'This jurisdiction is disciplinary and compensatory. It is not exercised for the purposes of enforcing legal rights, but for the purpose of ensuring honourable conduct on the part of the Court's own officers. It is distinct from any legal rights or remedies of the parties, it is unaffected by anything which affects the strict legal rights of the parties, and it is not limited to technical principles.'

Various powers have been recognised as incidents of the inherent supervisory jurisdiction of the Court with respect to legal practitioners. The authorities are clear, for instance, that:

(1) The Court may restrain legal representatives from acting in proceedings where a fair-minded, reasonably informed member of the public would consider that the proper administration of justice requires this result.[23] In the well-known decision of *Kallinicos v Hunt* (2005) 64 NSWLR 561, for example, Brereton J (as his Honour then was) restrained a solicitor from acting in circumstances where he was likely to be a material witness in the proceedings, and the propriety of his conduct was likely to come under scrutiny. The solicitor would therefore have been in a position in which his client's interest, his own interest and his obligation to the Court could come into conflict. Obviously, acting in this sort of situation could also cause a solicitor to breach rules 3 and rule 12 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (NSW), which deal respectively with a solicitor's paramount duty to the Court and duty not prefer their own interests to the interests of their client.

(2) The Court may order legal representatives to personally pay the opposing party's, or their own client's, costs where the legal representative has been responsible for unnecessary or wasted costs.[24] This has been said to operate in circumstances where there has been a failure by the legal practitioner to discharge their duty 'to aid in promoting ... the cause of justice'.[25] I consider this further below.

(3) The Court may regulate the costs, charges or disbursements claimed by officers of the Court, including by making orders for solicitors to repay amounts overcharged to clients. This power can be traced to the Courts' jurisdiction 'to secure that the solicitor, as an officer of the Court, is remunerated properly, and no more, for work he does as a solicitor'.[26]

Issues of this nature arose in *Bell v Hartnett Lawyers (No 3)* [2022] NSWSC 1204. The facts may be briefly summarised. A Queensland solicitor, Mr Hartnett, charged his elderly mortgagee client the sum of $288,601.03 for acting in uncontested possession proceedings for the enforcement of a $30,000 mortgage. The property in question was worth just over $300,000. After the property was sold, Mr Hartnett asked his client to sign a trust account authority, which would advance him legal costs from the proceeds of sale, on the basis that she would receive the full mortgage sum and interest. She signed the authority. Mr Hartnett transferred his invoiced legal fees from his trust account. This left the mortgagor to a remainder sum from the proceeds of sale of only $33,834.45. Mr Hart-

nett did not pay over that sum until ordered by the Court.

After being appointed the mortgagor's executor, Mr Bell sought an assessment of the costs of the work Mr Hartnett had performed for the mortgagee. Costs were assessed at $37,345.50. Mr Bell brought proceedings against Mr Hartnett, seeking a declaration that he held $287,551.30 on trust for him and an order that Mr Bell pay him that amount.

In 1991, Young J expressed the concern that a mortgagee's interests would be in tension with a mortgagor, where the mortgagee is contractually entitled to pay out of 'someone else's money' for a service, such as legal fees.[27] Here, the mortgagee was entitled to be reimbursed all enforcement costs out of the sale of the secured property.

For reasons which need not be detailed, Mr Bell was unable to succeed in his case on any of the equitable grounds raised. Therefore, the question which arose for consideration, was whether the inherent jurisdiction could provide a remedy to the mortgagor in relation to the excessively high solicitor fees.

This question was answered in the affirmative and Mr Hartnett was ordered to pay Mr Bell $251,255.53, which was the difference between what Mr Hartnett had been paid out of the proceeds of sale for his legal fees and the assessment of those fees. Mr Hartnett was also ordered to pay Mr Bell's costs on an indemnity basis, also pursuant the inherent jurisdiction.

While there are many authorities where an overcharging solicitor has been ordered to repay monies to their client as an exercise of the inherent jurisdiction, none was located, in which the inherent jurisdiction was used to order an overcharging solicitor to pay monies to a person other than their own client. However, the inherent jurisdiction of the Court is incapable of being confined to defined categories, and the Court is not limited by technicalities or considerations of strict legal rights and duties in determining whether to exercise the jurisdiction.[28]

In the case of the Court's jurisdiction to regulate the quantum of professional charges, the authorities indicate that the key question for the Court is whether one of its officers should be held to ethical and honourable behaviour.[29] Having regard to all the circumstances of the case, and not being limited by technicalities, it was clear that Mr Hartnett should be held to proper ethical and honourable behaviour. This, in turn, necessitated orders requiring Mr Hartnett to repay the amount of exorbitantly charged costs to the person who bore those costs, which in this case was in fact the mortgagor's estate, not his client.

On 12 October 2023, the Court of Appeal dismissed Mr Hartnett's appeal. Bell CJ, with whom Adamson JA and Griffiths AJA agreed, stressed the importance of the inherent supervisory jurisdiction of the Court with respect to costs charged by legal practitioners.[30] The Chief Justice emphasised that '[the] highest standards of integrity are expected of members of the legal profession' and such standards focus the application of the inherent supervisory jurisdiction.[31] As a corollary to this point, his Honour observed that instances of exorbitant charging by legal practitioners were apt to debase the reputation of the legal profession and subject clients, or others, to unwarranted costs.[32]

Gross sum costs order

While it had been determined that Mr Hartnett ought to pay Mr Bell's costs of the trial on an indemnity basis, after Mr Hartnett failed in his appeal, Mr Bell sought that the costs of the trial be payable as a gross sum in the amount of $229,266.75 pursuant to s98(4)(c) of the Civil Procedure Act 2005 (NSW).[33] Those costs were referable to work carried out over 2021 and 2022.

Mr Hartnett resisted any gross sum costs order, agitating instead for the usual assessment process. In addition, Mr Hartnett sought to rely on an order of Slattery J, made at an earlier point in the proceedings, in November 2021 concerning the capping of costs.

At a directions hearing, Slattery J had expressed his concern about the cost and extent of further evidence being put on by the parties. Uniform Civil Procedure Rules 2005 (NSW) r42.4(1) provides:

The Court may by order, of its own motion or on the application of a party, specify the maximum costs that may be recovered by one party from another.

The parties consented to an order that prohibited either party from seeking to recover more than $10,000 'in respect of the remaining costs issues in these proceedings, such prohibition being for fees incurred from 8 November 2021'. Mr Hartnett submitted that the effect of this order was that Mr Bell was not entitled to seek to recover more than $10,000 for any costs incurred after 8 November 2021.

Mr Hartnett's submission was rejected as a matter of the proper construction of Slattery J's orders, because of the context in which that order was made. For example, at the time of the order, it was not known that Mr Hartnett would seek to have the proceedings removed to the Court of Appeal.

As an alternative to the proper construction of Slattery J's order, it was also appropriate to vary his Honour's order pursuant to Uniform Civil Procedure Rules 2005 (NSW) r42.4(4). That rule provides:

'If, in the Court's opinion, there are special reasons, and it is in the interests of justice to do so, the Court may vary the specification of maximum recoverable costs ordered under subrule (1).'

In the event, there were 'special reasons' to vary the cap imposed by Slattery J, if the cap applied. These reasons included the fact that the matter had not progressed as expected by Slattery J. In particular, the substantive hearing had ultimately taken days, and the focus of the hearing became the supervisory jurisdiction of the Court and a consideration of the voluminous material before the Court.

Importantly, the 'special reasons' to vary the cap also included the findings made in the substantive judgment regarding the inherent jurisdiction, and the order of indemnity costs issued against Mr Hartnett by reason of his conduct throughout. Hav-

ing regard to these circumstances, it would not have been just to cause Mr Bell to bear all his costs beyond $10,000. The Court ordered, instead, that the cap should be raised to the amount actually incurred, less any appropriate discount considered in relation to the gross sum costs order, which was sought by, and ultimately awarded to, Mr Bell.

The principles concerning a gross sum costs order pursuant to s 98(4)(c) of the Civil Procedure Act 2005 (NSW) are well known. That section provides:

'(4) In particular, at any time before costs are referred for assessment, the Court may make an order to the effect that the party to whom costs are to be paid is to be entitled to —

'...

'(c) a specified gross sum instead of assessed costs, or

'... '

The principal purpose of a specified gross sum costs order under s98(4)(c) of is 'to avoid the expense, delay and aggravation likely to be involved in a contested costs assessment process'.[34] The power to award a gross sum should only be exercised 'when the Court considers that it can do so fairly between the parties and where an appropriate sum can be determined from the available materials'.[35] Additionally, the Court is entitled to adopt a 'broad brush' approach to quantification, having regard to the matters the parties have raised for consideration.[36]

The standard of evidence required for the Court to make a gross sum costs order will vary from case to case, depending on the circumstances.[37] In this case, the Court had been provided with itemised invoices and a breakdown of the hourly rates charged by the solicitors for Mr Bell, which could be readily understood and assessed. This evidence sufficed, in the circumstances of the case, to support a conclusion that the Court's power to make a gross sum costs order could be fairly exercised in relation to Mr Bell's costs. The gross sum costs order would also help avoid further delay and acrimony between the parties, in circumstances where there was a demonstrated history of both. The gross sum order was therefore made. For various reasons identified in the Judgment, the gross sum sought was reduced to $185,000.

Overlap of s99 Legal Profession Act and inherent jurisdiction as to costs

Personal costs orders may also be made against lawyers.

As the authorities make clear, statutory provisions dealing with the issue of lawyers' costs are complementary to the inherent supervisory jurisdiction of the Court with respect to costs, and do not oust it.[38] As the Full Federal Court put it in *Landsal Pty Ltd (in liq) v REI Building Society* (1993) 41 FCR 421 at 427:[39]

'[The inherent jurisdiction] is not confined to a situation in which there is no statute or rule of Court that could possibly apply to what is to be done in that regard. The true rule is that a Court may exercise its inherent or implied powers in a particular case, even in respect of matters that are regulated by a provision of a statute or rules of Court, so long as it can do so without contravening any such provision.'

Overlap between the statutory and inherent jurisdictions with respect to costs is not uncommon. A particularly clear instance shows itself in relation to the Court's powers to make orders that a legal representative personally pay the opposing party, or their own client's, costs for unnecessary or wasted costs. In *Tuitupou v Davis,* for instance, Ward CJ in Eq (as the President then was) spoke of both jurisdictions operating, observing that (citations omitted):[40]

'There is both inherent and statutory jurisdiction to make such an order if there is evidence that there has been a serious dereliction of duty, serious misconduct or gross negligence on the part of the legal practitioner ... the former in the exercise of the Court's supervisory jurisdiction over its officers; the latter pursuant to s99(1) of the Civil Procedure Act.'

Earlier in the same judgment, her Honour also elaborated on the principles shared between wasted costs orders in the inherent jurisdiction and wasted costs orders in the statutory jurisdiction under s99 (citations omitted):[41]

'Relevantly, those principles include: that the jurisdiction is to be exercised "with care and discretion and only in clear cases"; that, in considering whether to make a wasted costs order arising out of a lawyer's conduct of Court proceedings, full allowance must be made for the exigencies of acting in that environment and only when, with all allowances made, a legal practitioner's conduct of Court proceedings is quite plainly unjustifiable is it be appropriate to make such an order; that, as adverted to above, a legal practitioner against whom a claim for a costs order is made must have full and sufficient notice of the complaint and full and sufficient opportunity of answering it; that, where a legal practitioner's ability to rebut the complaint is hampered by the duty of confidentiality to the client he or she should be given the benefit of the doubt and in such circumstances, and an order should not be made against a practitioner who is precluded by legal professional privilege from advancing his or her full answer to the complaint made against him or her without it being fair in all the circumstances fair to do so; that, in exercising the jurisdiction, consideration is to be taken of the public interest reflected in the legislative provisions, namely, that litigants should not be financially prejudiced by the unjustifiable conduct of litigation by their, or their opponent's, lawyers; and that the procedure to be followed in determining applications for wasted costs must be fair and "as simple and summary as fairness permits".'

It is unnecessary to identify the precise differences in the operation of the inherent jurisdiction and s99. Generally, and as Dal Pont notes, 'it is safer if possible to base any order on both heads of power in the alternative.'[42] It will often be the case that the same set of circumstances will justify a wasted costs order under both the inherent and statutory jurisdictions.

The issue of wasted costs orders arose in the recent case of *Nahata v Robertson (No 2)*.[43] The substantive dispute concerned the plaintiffs' desire to develop their property and their application for a drainage easement over part of the defendants' property. On 15 June 2023, I delivered a judgment on this proceeding, dismissing the plaintiffs' application for the grant of an easement pursuant to s88K of the Conveyancing Act 1919 (NSW).[44] In *Nahata v Robertson (No 2),* the matter returned on the issue of costs, including as to whether the plaintiffs' solicitor, Mr Lee, ought to pay costs personally.

The defendants sought their costs on an indemnity basis from the plaintiff on the basis of allegedly unreasonable conduct on the part of the plaintiffs in the litigation. The plaintiffs resisted the order of indemnity costs, but argued that, whatever costs order was made against them, all costs for which the plaintiff was liable ought to be borne personally by their solicitor, Mr Lee.

To order a party to pay indemnity costs, a Court must be satisfied that the party persisted 'in what should on proper consideration be seen to be a hopeless case'.[45] Two aspects of the plaintiffs conduct in the proceeding satisfied me that this was the case:

(1) the plaintiff, through their solicitor Mr Lee, had failed to provide the terms of the easement to the defendant and the Court, such that the whole application was doomed to fail; and

(2) the plaintiff, through their solicitor Mr Lee, had failed to engage meaningfully with the defendants as required by s88K(2)(c) of the Conveyancing Act 1919 (NSW).

To order Mr Lee to pay the plaintiffs the whole of the costs, for which the plaintiffs were liable, the requirements of the inherent jurisdiction and/or s99 would have to be met. In the event, only s99 was explicitly considered. The conduct which enlivened the statutory jurisdiction under s99 is too voluminous to recount in full. Speaking broadly, however, Mr Lee was found to have engaged in the following improper and delinquent conduct:

(1) He refused to engage with the defendants' lawyers about the appropriate form of Court book, despite clear orders and explanations. Instead, he provided his own wasted Court book without the defendants' consent and contrary to the Court's orders.

(2) He failed to comply with the directions for a chronology, joint statement of real issues in dispute and failed to engage in limiting the objections to evidence and include those documents in the Court book. He appeared to have made a decision that such documents were simply 'not needed'.

(3) He was discourteous in response to questions of the Court at the beginning of the hearing on 23 May 2023 and made a false statement to the Court about his difficulties in preparing a Court book including pagination. This conduct was not defended by Mr Lee.

(4) He commenced and conducted the proceedings in a manner which demonstrated a misconception as to a basic element of law, namely, what an applicant must prove in a s88K case. He never considered it necessary, for example, to bring forward to the Court any of the essential evidence for the application to be successful.

(5) At the hearing, he did not engage with the defendants' objection to his clients' evidence and, when given the opportunity to deal with each objection, did not engage with the Evidence Act 1995 (NSW).

It was found that there was no reasonable explanation for the aforementioned conduct other than serious incompetence, or serious misconduct or neglect of Mr Lee's professional obligations, that was beyond mere incompetence. In the circumstances, and because the plaintiff's case was doomed to fail from the outset because of Mr Lee's basic misconception of the law, Mr Lee's conduct was considered to have caused the costs of the whole proceedings to be wasted. In these circumstances, Mr Lee was ordered to pay the plaintiffs the whole of the costs, for which the plaintiffs were liable, pursuant to s99(2)(b)(ii) Civil Procedure Act 2005 (NSW).

Although it was not explicitly considered, it is likely a similar outcome could have been reached in exercise of the inherent jurisdiction.

For completeness, the Supreme Court Practice Note General 5 is designed to 'ensure compliance with directions and the rules of the Court'. It also sets out the Court's expectation of practitioners and the process adopted by the Court in considering exercising power to make personal costs orders.

Conclusion

Ideally, the Court's inherent jurisdiction is rarely necessary to ensure justice between the parties and to uphold the Court's processes. It is trite that it is in the interests of the Court, the profession, and the public that officers of the Court adhere to the highest of ethical and professional standards at all times.

The overwhelming majority of practitioners do just that. However, where there is a failure to adhere to the high standards expected, the Court has demonstrated a willingness to exercise the inherent jurisdiction to provide appropriate outcomes, including as to costs, to regulate inappropriate conduct.

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* Supreme Court of NSW.

1 I gratefully acknowledge the assistance of Daniel Reede, the current Researcher for the Real Property and Succession and Probate lists, in the preparation of this paper which was delivered at the Far North Coast Law Society Contining Legal Education Conference in February, 2024.

2 I H Jacob, 'The Inherent Jurisdiction of the Court' (1970) 23(1) *Current Legal Problems* 23, 27.

3 *R v Forbes; ex parte Bevan* (1972) 127 CLR 1, 7-8 (Menzies J). This is also the definition employed by P Butt and D Hamer, *LexisNexis Concise Australian Legal Dictionary* (LexisNexis, 4th ed, 2011).

4 *Grassby v The Queen* (1989) 168 CLR 1, 16 (Dawson J). See

the broader discussion in *Condon v Pompano Pty Ltd* (2013) 252 CLR 38, 59-62 (French CJ).

5 *Beau Timothy John Hartnett trading as Hartnett Lawyers v Anthony Robert Bell as Executor of the Estate of the late Mabel Dawn Deakin-Bell* [2023] NSWCA 244, [123] (Bell CJ, Adamson JA and Griffiths AJA agreeing), citing *McGuirk v University of New South Wales* [2010] NSWCA 104, [178]; *Reid v Howard* (1995) 184 CLR 1, 16; *Tringali v Stewardson Stubbs & Collett Ltd* (1966) 66 SR (NSW) 335, 344.

6 [2023] NSWCA 244, [123], citing *Ex parte Farren; Re Austin* (1960) 77 WN (NSW) 743, 744.

7 *Dwyer v National Companies & Securities Commission* (1988) 15 NSWLR 285, 287 (McClelland J).

8 Keith Mason, 'The Inherent Jurisdiction of the Court' (1983) 57(8) *Australian Law Journal* 449, 451.

9 Wendy Lacey, 'Inherent Jurisdiction, Judicial Power and Implied Guarantees under Chapter III of the Constitution' (2003) 31(1) *Federal Law Review* 57, 66.

10 For a comprehensive account of contempt, including its relation to the inherent jurisdiction, see David Rolph, *Contempt* (1st ed, Federation Press 2023).

11 *Ahnee v Director of Public Prosecutions* [1999] 2 AC 294, 305 (Steyn L).

12 *Landsal Pty Ltd (in liq) v REI Building Society* (1993) 41 FCR 421, 427 (Keely, Burchett and Drummond JJ), citing *Taylor v Attorney-General* [1975] 2 NZLR 675 at 680, 687-688 and 692-693.

13 I H Jacob, 'The Inherent Jurisdiction of the Court' (1970) 23(1) *Current Legal Problems* 23, 23.

14 *Grassby v The Queen* (1989) 168 CLR 1,16 (Dawson J).

15 *PT Bayan Resources TBK v BCBC Singapore Pte Ltd* (2015) 258 CLR 1, 17 (French CJ, Kiefel, Bell, Gageler and Gordon JJ).

16 Rebecca Ananian-Walsh, 'The Inherent Jurisdiction of Courts and the Fair Trial' (2019) 41(4) *Sydney Law Review* 423, 424.

17 Unusual applications are also sometimes successful. Recently, in *The Adoption of Emily* (a pseudonym) [2024] NSWSC 87, for example, Stevenson J exercised the inherent jurisdiction to declare that a person recorded on a minor's birth certificate as her father was not, in fact, her father; see also *Crawford v Davidson-Crawford* [2019] NSWSC 728 (Ward CJ in Eq).

18 *Re B* [1994] 2 FLR 479 (Butler-Sloss, Kenned and Hobhouse LJJ).

19 *UMCI Ltd v Tokio Marine & Fire Insurance* [2006] SGHC 142 (Menon CJ).

20 *Covell Matthews & Partners v French Wools Ltd* [1977] EWCA Civ.

21 *Furesh (as administrator of Intestate Estate of Slipcevich) v Schor* (2013) 45 WAR 546.

22 *Atanaskovic Hartnell v Birketu Pty Ltd* [2021] NSWCA 201, [130]-[131] (Gleeson JA, Basten and McCallum JJA agreeing).

23 *Kallinicos v Hunt* (2005) 64 NSWLR 561, [76] (Brereton J).

24 *NHB Enterprises Pty Ltd v Corry (No 5)* [2020] NSWSC 1838, [44] (Ward CJ in Eq), citing *Re Felicity; FM v Secretary, Department of Family and Community Services (No 4)* [2015] NSWCA 19, [15] (Basten JA).

25 *Re Felicity; FM v Secretary, Dept of Family and Community Services (No 4)* [2015] NSWCA 19, [18] (Basten JA), citing *Myers v Elman* [1940] AC 282, 319 (Wright L); *Lemoto v Able Technical Pty Ltd* (2005) 63 NSWLR 300, [92] (Hodgson JA).

26 *Electrical Trades Union v Tarlo* [1964] 2 WLR 1041, 1050 (Wilberforce J).

27 *Parramatta River Lodge Pty Ltd v Sunman* (1991) 5 BPR 12,038, 12,046 (Young J).

28 *Tringali v Stewardson Stubbs & Collett Pty Ltd* [1966] 1 NSWR 354, 361 (Wallace P, Jacobs JA, Asprey JA); *Reid v Howard* (1995) 184 CLR 1, 16 (Toohey, Gaudron, McHugh and Gummow JJ).

29 *Atanoskovic v Atanaskovic v Birketu Pty Ltd — Supervisory Jurisdiction* [2020] NSWSC 573, [80] - [81] (Hammerschlag J).

30 *Beau Timothy John Hartnett trading as Hartnett Lawyers v Anthony Robert Bell as Executor of the Estate of the late Mabel Dawn Deakin-Bell* [2023] NSWCA 244, Bell CJ (Adamson JA and Griffiths AJA agreeing).

31 [2023] NSWCA 244, [133] (Bell CJ, Adamson JA and Griffiths AJA agreeing).

32 [2023] NSWCA 244, [130] (Bell CJ, Adamson JA and Griffiths AJA agreeing).

33 *Bell v Hartnett Lawyers (No 4)* [2023] NSWSC 1592.

34 *Ahern v Aon Risk Services Australia Limited (No 2)* [2022] NSWCA 39, [15] (Meagher, White and Brereton JJA).

35 [2022] NSWCA 39, [17] (Meagher, White and Brereton JJA).

36 *Ahern v Aon Risk Services Australia Limited (No 2)* [2022] NSWCA 39, [42].

37 *Stoddart (NSW) Pty Ltd v Kellyville Building Pty Ltd* [2019] NSWSC 1480, [26] (Darke J).

38 *Woolf v Snipe* (1933) 48 CLR 677, 678 (Dixon J); *Pryles & Defteros (a firm) v Green* [1999] 20 WAR 541, [24] (Parker J).

39 *Landsal Pty Ltd (in liq) v REI Building Society* (1993) 41 FCR 421, 427 (Keely, Burchett and Drummond JJ), citing *Taylor v Attorney-General* [1975] 2 NZLR 675, 680, 687-688 and 692-693.

40 *Tuitupou v Davis* [2019] NSWSC 160, [61] (Ward CJ In Eq).

41 [2019] NSWSC 160, [47] (Ward CJ in Eq).

42 G E Dal Pont Law of Costs (4th edn, Lawbook Co, 2018), [23.61].

43 Nahata v Robertson (No 2) [2023] NSWSC 1297.

44 *Nahata v Robertson* [2023] NSWSC 642.

45 *J-Corp Pty Ltd v Australian Builders Labourers Federation Union of Workers (WA Branch) (No 2)* [1993] FCA 70, [5] (French J).